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# QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR: TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37

Addendum

## Visit by the Special Rapporteur to Chile

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## Introduction

1. On 12 April 1995 the Special Rapporteur on the Question of Torture of the Commission on Human Rights sent a letter to the Government of Chile expressing his concern at a series of complaints he had received of alleged torture in the country, and urging that they be duly investigated. He also stated that he wished to visit the country in order to collect first-hand information that would enable him better to evaluate the situation as regards the practice of torture. In June the Permanent Mission of Chile to the United Nations Office at Geneva told the Special Rapporteur of the Government's willingness to cooperate with his mandate and agreement to his visit.

2. The visit took place from 21 to 26 August 1995 and was based in Santiago. The Special Rapporteur held meetings with the Under-Secretaries of the Foreign Affairs, Justice and Interior Ministries, the President of the Supreme Court, the President of the Military Appeal Court and the highest authorities of the Police Department (Policía de Investigaciones), Carabineros, Gendarmería, Forensic Medicine Department and the National Compensation and Reconciliation Agency. He also interviewed representatives of the academic world, victims of torture or their relatives, as well as representatives of the following non-governmental organizations: International Association Against Torture, Human Rights Watch, Opción, Committee for the Defence of the People's Rights (CODEPU), Social Assistance Foundation of the Christian Churches (FASIC), Chilean Human Rights Commission and People's Defence Organization. The Special Rapporteur also visited the maximum security section of the Santiago South Preventive Detention Centre, the women's section of San Miguel prison and the Comunidad Tiempo Joven detention centre for minors. In all three places he was able to meet with the authorities personally and with several members of the staff.

3. The Special Rapporteur would like to thank the Government of Chile for having allowed him to make this visit and for the full cooperation he received from its representatives at all times, which greatly facilitated his work.

## I. CURRENT TREATMENT OF CASES OF TORTURE OCCURRING BEFORE 1990

4. The successive civilian Governments in the country since the end of the military dictatorship in 1990 have made significant progress in restoring democracy and respect for human rights. Nevertheless, the Chilean authorities and society in general continue to consider the current period as one of transition, since the legal framework established by the 1980 Constitution (slightly amended subsequently) and various laws enacted during the military Government continue in force, providing obstacles to the democratic functioning of some of the highest institutions in the country. For example, the provisions governing the irremovability of Commanders-in-Chief of the Armed Forces and the Director of the Carabineros continue in force, as well as others that seriously limit the President's powers to intervene in matters relating to the armed forces, including high rank appointments. On the other hand, as a result of the appointment of senators and the preference given to minority parties in the electoral system the opposition in Congress is very strong and is able to curb the proposals of the President of the Republic for legislative reform aimed at eliminating some of the anti-democratic aspects of the present system.

5. When the Committee against Torture, which was established to monitor the implementation by the States parties, including Chile, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considered the second periodic report of Chile in November 1994, it recommended the adoption of measures to make the security forces subordinate to the civil authorities and the abandonment of all vestiges of the legislation enacted by the military dictatorship. 1/ The Special Rapporteur fully endorses those recommendations.

6. The persistence of the above-mentioned features has a significant influence on the treatment of human rights questions, not only regarding violations that might occur in the present or in the future, but more particularly regarding those which occurred under the military Government. One of the most important aspects in that connection is the maintenance of the Amnesty Act of 1978, which prevents the prosecution of those responsible for violations committed between 1973 and 1978. Although there are many cases currently before the courts, also involving events subsequent to 1978, only extremely few have resulted in judgements clarifying the facts, which is tantamount to making impunity the general rule and is in sharp contrast to the seriousness of the facts described in the report of the National Commission for Truth and Reconciliation.

7. The Commission did not analyse the practice of torture per se, focusing only on executions and disappearances. However, no one is unaware that torture was practised systematically in connection with detentions for political reasons. The National Compensation and Reconciliation Agency has not looked into cases of torture during the previous period either; its work has basically consisted of helping the National Commission assess cases and provide relatives with compensation. Cases of torture not followed by death or disappearance do not give rise to compensation through this means. In such cases the only remedy available lies before an ordinary court.

8. The Ministry of Health has, however, established a medical aid programme called the Programme of Compensation and Full Health Care for Victims of Human Rights Violations (PRAIS). This programme has been functioning regularly in various parts of the country. It is aimed at providing care to individuals suffering from physical or mental consequences of ill-treatment to which either they or members of their family were subjected by the security forces, which covers victims of torture. Agency authorities told the Special Rapporteur that they had received statements from individuals who had been disabled as a result of torture, but that they lacked a mandate to grant compensation in such cases. There are also serious difficulties in gathering evidence of participation by State officials in such cases, largely because of the secrecy in which torture was practised. The only assistance possible for such individuals is medical assistance, with no attention given to other aspects that are also very important, such as reinsertion into the labour force. PRAIS is also dealing with victims of ill-treatment subsequent to 1990.

9. On his visit to Chile the Special Rapporteur received up-to-date information on developments in proceedings relating to three cases of persons tortured and executed during the period of the military Government: Mario Fernández López, Carmelo Soria Espinosa and Carlos Godoy Echegoyen. The

information alleged that there had been a series of irregularities in the legal proceedings, which ultimately made it impossible to establish the facts and punish those responsible. In a letter dated 27 October 1995 the Special Rapporteur informed the Government of specific concerns in relation to each of these cases and asked that they be brought to the attention of the bodies currently investigating them.

## II. COMPLAINTS OF TORTURE RECEIVED BY THE SPECIAL RAPPORTEUR

### A. Common features

10. The information received by the Special Rapporteur from different sources leads him to conclude that, although torture is not practised in Chile either systematically or as a result of government policy, the cases currently occurring are sufficiently numerous and serious for the authorities to continue looking into the problem and for the State's rejection of torture to be reflected in the adoption of specific measures.

11. On the basis of reports received from non-governmental organiz tions, the Special Rapporteur has transmitted a number of cases to the Government in recent years with the request that they be duly investigated. Thus in 1992 the Special Rapporteur transmitted 17 cases allegedly occurring between 1990 and 1992. In most of them the Government replied that the individuals in question had not filed complaints of torture. In two it stated that, according to the corresponding medical reports, the persons in question had not displayed visible signs of torture, and in one that the complaint had been rejected for lack of evidence.

12. In 1993 the Special Rapporteur transmitted 47 new cases allegedly occurring between 1991 and 1993, out of which the Government replied to 31. In 17 cases the reply stated that according to the report of the Forensic Medicine Department there had been no visible signs of torture; in 10 it stated that, according to the corresponding medical report the individual displayed multiple bruises; in two cases the reply stated that no complaint of torture had been filed and in one that the medical report had indicated signs of torture but that the claim had been rejected for lack of evidence. Finally, in one case it was stated that the report of the Carabineros doctor had not indicated any signs of torture.

13. In 1995 the Special Rapporteur transmitted 46 further cases alleged to have occurred between 1992 and 1995. At the date of conclusion of this report the Government had replied to an initial group of 22. Nine of these replies indicated that the complaint filed had been dismissed because it had not been substantiated that the offence had been committed or because of lack of evidence; in seven cases it was stated that the complaint was being processed, although in some of these cases the administrative inquiry concluded that no irregularities had occurred. In three cases it was stated that no complaint had been filed; in one that the Forensic Medicine Department had not observed any injuries; in one, that the Forensic Medicine Department had observed serious injuries; finally, in one case it was indicated that a Carabineros official had been given a disciplinary sanction but that the case had been dismissed because it had not been fully proved that an offence had been committed.

14. According to a recent study of the Chilean criminal and judicial system based on empirical data prepared by Diego Portales University, ill-treatment of detainees by the police in the interval between arrest and appearance before a judge or release is fairly customary. According to statistics based on interviews with prisoners, 22 per cent said they had received good treatment, while 71 per cent said they had received poor treatment and 7 per cent irregular treatment. Among the poorly treated prisoners, 74 per cent said they had received blows of various kinds, 49 per cent said they had had electric shocks applied to various parts of their bodies; 20 per cent said they had been undressed; 6 per cent had been hung by their hands and feet and 5 per cent said plastic bags had been placed over their heads. 2/

15. Forensic Medicine Department authorities told the Special Rapporteur that, although they did not believe torture was practised systematically, they did encounter a small percentage of injuries resulting from torture. 3/

16. The Committee for the Defence of the People's Rights (CODEPU), for its part prepared a report based on the complaints received by a legal team between March 1994 and August 1995, stating that it had received 51 complaints, which may be broken down as follows: 1 of torture resulting in death; 21 of torture resulting in serious injuries; 25 of torture resulting in light injuries and 4 of cruel and inhuman treatment. The Police Department was allegedly involved in 11 of the cases, Carabineros officials in 38 and other agencies in 2. Most of the victims were young men arrested for either alleged or accessory offences. 4/ CODEPU also received 140 complaints between 1990 and 1994, 100 of which led to judicial proceedings and 40 to administrative charges.

17. Both CODEPU and other non-governmental organizations agreed that the most frequent cases of torture tended to occur in the hours following the arrest, by Carabineros or Police Department officials, with fewer cases recently involving the latter. The most common objective of the torture appears to be extracting a self-incriminating statement from the detainee. The most frequently used methods are beating, by kicking, punching or hitting with blunt objects, such as a police truncheon; applying electric shocks to sensitive areas of the body and obstructing normal breathing, for example by placing a plastic bag over the head. The Special Rapporteur also learned of cases of sexual abuse against women and other cases in which the individual was reportedly hung by the hands and feet from a pole and beaten while in that position.

18. One type of treatment that appears to be fairly frequent consists of keeping detainees handcuffed and blindfolded for long periods, even as long as several days running, as well as depriving them of sleep. The Special Rapporteur received statements describing detentions, some recent, in which such methods had been used virtually exclusively.

19. The practice of blindfolding detainees, together with the fact that only high-level police officials wear identification badges, makes it difficult for detainees to identify those responsible for abuses. It was also pointed out that there is no requirement under the law for the name of the officers making the arrest and conducting the interrogation to be recorded. The Special

Rapporteur refers in this connection to Principle 12 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 5/ which stipulates that, when an arrest is made, there shall be duly recorded the identity of the law enforcement officials concerned and the records shall be communicated to the detained person or his counsel.

20. The cases of torture involve persons suspected of both ordinary offences and terrorist acts, although its use against the latter category appears to be decreasing of late. According to the non-governmental organizations, this would be due to the fact that victims in the terrorist category more readily report abuses, which are therefore more likely to be brought to public attention. On the other hand, terrorist activities and related arrests have decreased significantly, which is another reason why complaints of torture have decreased.

21. Testimony was also received relating to individuals arrested for terrorist acts according to which the ill-treatment had basically consisted of keeping the detainee seated on a chair, without allowing him to lie down, for several days running, blindfolded and with his hands handcuffed behind his back. The President of the Military Appeal Court told the Special Rapporteur that it was part of the terrorist groups' strategy to tell the judge that they had been tortured; he referred in particular to a case in which the Carabineros had been able to prove, by filming the interrogation, that the detainee had not been tortured. Of the 11 prisoners being held for terrorist-related offences (men and women) with whom the Special Rapporteur had the opportunity to speak, eight said that they had been tortured, providing details, in the days following their respective arrests, which were reported to have taken place basically between 1991 and 1993.

22. In a few of the cases communicated to the Special Rapporteur, the complainants pointed out the connection between the torture inflicted on a person and that person's subsequent death. For example, 18-year-old Rubén Bascur Jaeger was arrested by two Carabineros in the town of Futrono, Tenth Region, on 1 July 1995, in front of his family and neighbours. The latter had no news of him until they learned hours later that he had died. His body allegedly appeared on the roof of a hardware store located at 303 Calle Balmaceda. The autopsy report stated the cause of death as being respiratory arrest as a result of electric shock. The version that Carabineros gave the family was that the victim had climbed onto the roof of the hardware store with the intention of robbing it; he had then knocked against some electric cables, which caused his death. The preceding events, however, led the complainants to conclude that there was evidence that Carabineros had been responsible for the youth's death and had left the body on the roof of the hardware store to simulate a robbery.

23. Information was also received on the case of 44-year-old Miguel Angel Vallejos Palma, who was arrested on 25 February 1995 in the town of Panimávida, township of Colbún, Seventh Region, by Carabineros officials, apparently for being intoxicated. He was released some hours later. On returning home he told his relatives that he had been severely beaten while at the police station and complained of intense abdominal pain. He was taken to hospital, where he was operated on the following day but died. A criminal complaint has been filed with the Military Prosecutor in Talca.

24. In other cases he received, the Special Rapporteur was particularly struck by the cruelty shown by the members of police forces, although that might be difficult to appreciate from only a short account. Such was the case of Tania María Cordeiro Vaz, who was arrested together with her 13-year-old daughter, Patricia Vaz Peres Amorim, on 16 March 1993 in the city of Rancuagua by members of the Police Department's Assaults Investigation Squad. They were taken to police barracks at 1,800 Avenida José Pedro Alessandri, municipality of Macul, Santiago. It is alleged that Tania María Cordeiro remained there for about eight days, while her daughter was released on 20 March. During that time the former was allegedly subjected to interrogation regarding her supposed connection to a person accused of terrorism, and subjected to various forms of torture such as blows, deprivation of sleep, application of electric shocks to sensitive areas of her body on several occasions and rape. She was also reportedly forced to sign some statements which she was not allowed to read. Medical reports drawn up subsequently described physical injuries and psychological problems consistent with the treatment described. 6/

25. Alex Calderón Venegas was arrested on 13 August 1994 while walking in Tehuelche Street, Santiago, by a Carabineros patrol. It was alleged that, having been taken to a detention centre which he was not able to identify, he was severely beaten, at times while being hung by the arms, and received acid burns in the abdominal region. Some hours later he was reportedly placed in a vehicle and ejected in the vicinity of Recuerdo Park.

26. Hugo Francisco Carvajal Díaz, a merchant, was arrested on 17 April 1995 at his home in La Pintana, Estrecho de Magallanes district, Santiago, by Police Department officials who accused him of dealing in stolen goods. He was taken to the Twenty-Sixth Police Station in La Pintana, where he is said to have been blindfolded, slapped on both ears simultaneously and beaten on a wound he had in his right foot. He was also allegedly forced to undress, after which a cloth was stuffed in his mouth and he was tied hand and foot to a pole approximately 1 metre from the ground, in which position he was administered electric shocks.

27. Jaime Humberto Jorquera Arellano was arrested in Santiago on 4 November 1994 by individuals who were travelling in an automobile similar to those of the Police Department. He was allegedly blindfolded and taken to a place which he was unable to identify, where he was shown photographs of individuals supposedly involved in the drug traffic. When he said that he did not know the individuals, he was reportedly again blindfolded, kicked, punched and beaten with a blunt object for approximately four hours. He was then undressed, soaked and subjected to electric shocks for approximately 30 minutes. The same day he was allegedly put back into a police car and abandoned in an outlying district of Santiago after being threatened with death if he told what had happened. At an emergency unit he was diagnosed as having severe burns on his right forearm, which were also acknowledged by the Forensic Medicine Department. A criminal complaint was filed for abduction and application of torture with the Twenty-Second Criminal Court in Santiago. The investigation, conducted by the Police Department, concluded that none of the latter's staff had been involved, but that a Carabineros sergeant might be responsible. The proceedings were then suspended for lack of merits. The case is currently under appeal, with the State Security Council having become a party to the proceedings.

28. Other cases appear not even to have been motivated by a desire to make the detainee incriminate himself, and the victims, who are not suspected of any offence, were the first to be surprised at the abusive attitude and lack of ethical principles on the part of the police. Such was the case of Cecilia Maria Silva Codoy, a resident of Temuco, who called at the Las Quilas Carabineros station on 6 November 1994 to complain at the nuisance caused by a clandestine alcoholic beverage shop near her home. Reportedly, however, the police did not allow her to file her complaint. Instead, they kicked and punched her, beat her with their truncheons and made her undress. On 10 November she went to the San Juan de Dios hospital in Santiago, where she was reportedly diagnosed as having bruises of the right lower eyelid, a haematoma on the right side of her jaw, multiple abrasions on her left hand and bruises on the outer side of her left arm. A complaint of torture was filed with the Criminal Court in Temuco.

29. Pablo Seguel Ramirez was allegedly severely beaten on 6 January 1995 when he went up to a Carabineros van parked near El Quisco beach to report that he had been robbed. He received a fractured jaw as a result of the attack.

30. In another case, 16-year-old Hernán Alfonso San Martin Jerez and another minor, Alex Alarcón, were arrested by Carabineros on 4 March 1995 in the town of Renca. They were allegedly taken to Lo Velásquez substation, where they were severely beaten, in particular with a strip of metal on their bare torsos. When Hernán Alfonso San Martin's mother, Maria Jeria Castillo, called at the substation to ask about her son, she was reportedly also beaten and had to be taken to the San Juan de Dios hospital first-aid post.

31. People arrested for public drunkenness also appear to be frequently ill-treated, even when they are not displaying any aggressiveness or causing a nuisance. Jorge Bustamente Inostroza, for instance, was arrested for drunkenness by Carabineros on 13 February 1995 while walking on O'Higgins Avenue in Santiago. He was allegedly taken to the First Carabineros Station, where he was kicked, punched and beaten with truncheons to the point of losing consciousness. He was also allegedly slapped simultaneously on both ears. On 15 February, after his release, he arrived at the University of Chile hospital casualty station complaining of severe pain and was given an emergency operation for "intestinal trauma". On 14 March 1995 he filed a criminal complaint for torture with the First Criminal Court in Santiago.

32. As for the situation in the prisons, various sources concur that there are no incidents of torture but that the physical conditions in most of the prisons are very inadequate. The Special Rapporteur did learn of some incidents of ill-treatment that allegedly occurred in the maximum security section of Santiago South Preventive Detention Centre and the women's section of San Miguel prison, although the prisoners in both establishments with whom the Special Rapporteur spoke said that the treatment was generally decent. Regarding the maximum security section, the Special Rapporteur, in the course of a rapid inspection of the premises, noted that they were in a good state physically but that the establishment was not conducive to protecting the prisoners' mental health. In the women's section of San Miguel prison, although the physical conditions were acceptable, the Special Rapporteur

received complaints on some specific aspects, such as the unhealthiness of some areas or the fact that prisoners had to walk through corridors in the men's section to reach the visitor's area.

33. With regard to the Comunidad Tiempo Joven Detention Centre for Minors, the Special Rapporteur was shocked at the conditions under which minors assigned to punishment cells are kept. These cells are located in containers. Minors may be kept in them for several days, on a judge's order, in complete isolation, without being able to practise any activity and without even being allowed to communicate with the staff. In the opinion of the Special Rapporteur, this measure is tantamount to cruel, inhuman or degrading treatment, and should not be ordered. Furthermore, the containers should be removed and replaced by a more humane punishment section.

## B. Arrest on suspicion

34. Article 260 of the Code of Penal Procedure provides for "arrest on suspicion". Under this provision, police officers are authorized to arrest "anyone who is disguised or who in any way makes it difficult to ascertain or conceals his true identity and refuses to identify himself", as well as "anyone who is present at an unusual time or at a place or in circumstances that give grounds to suspect malicious intent, should the explanation given by that person for his or her conduct fail to dispel the suspicion". Article 270 requires the chief of police before whom persons arrested under such circumstances are brought, to keep them under arrest or release them, depending on the explanations they give of their conduct and the circumstances that led to the arrest.

35. According to the information received, the police frequently commit abuses in the exercise of this authority. In working-class districts in particular, they frequently arrest youths, whom they subject to ill-treatment and release within 24 hours without at any point bringing them before a judge.

36. The Special Rapporteur heard considerable criticism of the provisions of article 260, which some people even described as anti-constitutional. A study by the National Compensation and Reconciliation Agency asserts that they "give rise to a whole range of powers, the use of which lies at the discretion of police officers. Thus, police officers are not obliged to arrest persons in such circumstances, but merely 'authorized to arrest them'. This provision clearly goes beyond the framework set by the Constitution, which is restrictive in so far as it stipulates that the police may arrest a person only by virtue of an order from a competent authority or in a case of flagrante delicto". 7/

37. The Ministry of the Interior informed the Special Rapporteur that the Government would shortly propose a bill to Parliament relating to arrests on suspicion. The bill provides, inter alia, for the addition of a new paragraph to article 260, applicable to the circumstances described above and establishing that: "If a person is not in possession of a document whereby his identity may be ascertained, he may be taken by the police officer to a police station, for the sole purpose of confirming his identity. This must be done as rapidly and expeditiously as possible, and care must be taken at all times to ensure that the person in question is not held with persons under

arrest." The bill also provides for the redrafting of article 270 to require the report on the arrest or transfer to the police station clearly to indicate that the detainee was informed of his rights.

38. Carabinero officials told the Special Rapporteur that they agreed that arrest on suspicion should be limited to cases in which there were genuine grounds for suspicion, and said that the person arrested should immediately be brought before a judge. They also said that although the legislation had not changed in that respect, Carabineros had issued internal instructions to limit the number of such arrests. As a result, their number had fallen from 190,000 in 1992 to approximately 15,000 in the first seven months of 1995.

### C. The attitude of the police authorities towards torture

39. As already mentioned, the civilian Governments have condemned torture and introduced a number of measures to combat it. One feature has been the initiation of a purge and a change of attitude in the police forces. The views heard by the Special Rapporteur suggest that the changes are proving fairly successful in the Police Department, which is under the authority of the Ministry of the Interior. Officials involved in cases of torture during the period of military government were dismissed as part of the new attitude, whereby the Department no longer considers itself to be subject to political authority, recovering instead its independent judgement in conformity with the rule of law; at the same time a more conscientious approach than in the past is taken towards investigating and punishing misconduct.

40. The Police Department authorities told the Special Rapporteur that they were trying to move towards a scientific and technical police force, whose prime objective is to seek the truth, thereby minimizing the importance of obtaining confessions and avoiding the use of violence for the sake of greater efficiency. In this context, officer training is extremely important, and currently includes a course specifically on human rights, which is taught by Department staff as well as by lawyers and teachers from outside.

41. A major step has been to establish an internal affairs unit to undertake disciplinary investigations into any complaints of abuses allegedly perpetrated by Police Department officials. The investigation may be initiated by the unit on its own authority or at the request of a party. If evidence of a fault is found, administrative proceedings are instituted, the unit itself ensuring that the proceedings are properly conducted. The unit also cooperates with the law courts in investigating past human rights violations, as well as cases involving members of the Carabineros. Non-governmental sources told the Special Rapporteur that the establishment of this unit had been a constructive step forward and confirmed that the administrative channel operated better than in the past.

42. The Special Rapporteur also held discussions with officials of the Carabineros, a military body which is under the authority of the Ministry of Defence. The officials said that good treatment was a constant concern of the institution, and that cases of abuse were exceptional. The Code of Professional Ethics, and a number of disciplinary instructions made it mandatory for any affront to human dignity to be reported by the head of the unit concerned. According to the same source, an internal administrative

investigation is made into any reported abuse, and if any evidence, including criminal evidence, is found, the Code of Penal Procedure or the Code of Military Justice is applied. They also said that a record was kept of the time and place of any police proceedings, and that such information had to be provided to a judge on request.

## III. PROTECTION OF THE RIGHT NOT TO BE TORTURED

### A. Legislation and procedural rules

43. Under the Government of President Aylwin a number of legislative measures were taken for the purposes of preventing and punishing torture. The reservations to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to the Inter-American Convention to Prevent and Punish Torture were withdrawn. In terms of domestic legislation, Act No. 19.047 of 14 February 1991 amended several articles of the Code of Penal Procedure in order better to safeguard the rights of persons, in particular by improving protection for the integrity of detainees and by reducing the periods of incommunicado detention allowed under the earlier system. As torture occurs mainly during the period of police detention, frequently for the purpose of extracting a confession, it is worth examining the legal regime instituted by the Code in this respect.

44. Where periods of detention are concerned, under normal conditions all detainees must be brought before a judge within 24 hours of their capture in cases of flagrante delicto or 48 hours in other cases (arts. 270 bis of the Code and 19.7 of the Constitution). The period of detention may in no circumstances exceed five days from the date on which the person arrested is brought before the court (art. 272). However, provision is made for exceptional periods of detention. Thus article 272 bis stipulates that a judge may, in a substantiated decision, extend the period of detention of 48 hours ordered or instituted by any other authority to a period of five days. When acts which the law classifies as terrorist are being investigated, the judge may extend the period of 48 hours to 10 days.

45. In the decision prolonging the period of detention in the cases referred to above, the court is required to order the detainee to be examined by a physician designated by the judge, who has to carry out the examination and report to the court on the same day as the decision. Under no circumstances may an official of the police unit which made the arrest or by whom the detainee is held be appointed for this purpose. Once the judge's authorization has expired, the detainee must in all cases be brought immediately before the judge and placed at his disposal. Gross negligence on the part of the judge in providing proper protection for a detainee will be considered a breach of duty. Non-governmental sources nevertheless criticized the fact that the obligation to carry out a medical examination only applied when the period of detention was prolonged, while with respect to the initial 48-hour period, a crucial one in respect of potential abuses, the regulations appeared somewhat ambiguous. In addition, officials from the Forensic Medicine Department said that on account of their limited resources they were not always able to comply with a request from a judge for an immediate examination of a detainee, and that several days might go by before the examination took place.

46. The Special Rapporteur believes that Chilean legislation should comply with the following provisions of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment:

> "Principle 24. A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.
>
> Principle 25. A detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or petition a judicial or other authority for a second medical examination or opinion.
>
> Principle 27. Non-compliance with these principles in obtaining evidence shall be taken into account in determining the admissibility of such evidence against a detained or imprisoned person."

47. Incommunicado detention 8/ may be ordered by the judge for the duration of the detention, and if the detention is transformed into pre-trial detention, it may be prolonged for the full 10-day period (art. 299), with the possibility of a further extension of a maximum of five days to gather additional evidence for the case (art. 300). The person held incommunicado may confer with his lawyer in the presence of a judge, albeit solely for the purpose of securing measures to end the incommunicado detention. Police Department officials told the Special Rapporteur that it was less and less necessary to hold people incommunicado for such long periods, since detainees' statements no longer constituted the most important evidence in the trial; in addition, the need to guard the detainee entailed additional responsibility which the Police Department preferred not to assume.

48. Where assistance from a lawyer is concerned, article 293 stipulates that detainees or prisoners, including prisoners held incommunicado, have the right to have their family, lawyer or a person of their choice informed of the fact by the police or court at whose disposal they have been placed. The official in charge of the police or prison establishment in which the detainee is held before being brought before the court may not deny him the right to confer with his lawyer, in the presence of the official, for up to 30 minutes each day, though only about the treatment he has received, his conditions of detention and the rights to which he is entitled. If a person is held incommunicado, article 303 stipulates that he may confer with his lawyer in the presence of the judge, albeit solely with a view to ending the incommunicado detention.

49. These provisions, which were introduced by Act No. 19.047, imply a considerable improvement in the protection of the rights of detainees, particularly as regards protection against torture or ill-treatment, in comparison with the previous situation in which detainees had no right at all to confer with their lawyer during the periods in question. Non-governmental sources nevertheless informed the Special Rapporteur that the provisions were inadequate on several counts. First of all, lawyers' visits to detainees

before they are brought before the court take place in the presence of an official. Although this is necessary for security reasons, in practice it restricts detainees' ability freely to communicate with their lawyer, out of fear of reprisals and the possibility of ill-treatment. Secondly, the right to a visit is virtually non-existent when persons are held incommunicado, a practice which is in fact quite common. Accordingly, the Special Rapporteur believes that the regime described is not fully in conformity with the provisions of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, Principle 18 of which states as follows:

> "3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.
>
> 4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official."

50. Paragraph 8 of the Basic Principles on the Role of Lawyers 9/ stipulates that "All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials". Furthermore, in its general comment No. 13 relating to article 14 of the International Covenant on Civil and Political Rights, the Human Rights Committee has stated that subparagraph 3 (b) 10/ "requires counsel to communicate with the accused in conditions giving full respect for the confidentiality of their communications. Lawyers should be able to counsel and to represent their clients in accordance with their established professional standards and judgement without any restrictions, influences, pressures or undue interference from any quarter". 11/

51. Moreover, it was pointed out that the presence of the lawyer is restricted to the right to visit, and that he is unable to participate in the phase during which the police take a statement from the detainee, prior to any intervention by the judicial authorities. Lawyers are also excluded from the phase in which the accused answers the charges against him, which is done before the judge, in the presence of the court clerk and in camera. This step is however of great importance, as it provides the basis on which the judge may order committal for trial. Under domestic legislation, the presence of a defending counsel is only mandatory once the committal order has been issued.

52. Further to the above measures, in its articles 306 et seq. the Code also regulates amparo procedure, under which any individual who is detained in violation of the provisions of the law, or in the absence of sufficient evidence or grounds, may apply to the relevant court of appeal for his immediate release. The court may designate one of its judges to visit the place of detention, hear the detainee and, on the basis of his findings,

decide whether or not to order his release or put right the reported defects. In addition, the court may order the detainee to be brought before it. Non-governmental sources informed the Special Rapporteur that in practice judges only very rarely avail themselves of the possibility to visit places of detention, even though the law authorizes them to do so. Judges decide cases on the basis of police reports, under a written procedure whereby neither is the detainee brought before the court nor are his conditions of detention verified. Consequently, in the light of the importance of such visits as a means of preventing torture, measures should be taken to generalize their use whenever necessary. 12/

53. Regarding confessions, under article 481 of the Code a confession by an accused person shall serve as proof that he participated in an offence, under the following circumstances: that it is made before the judge hearing the case; that it is made freely and consciously; that the act to which he confesses is possible and plausible, in the light of the accused's personal circumstances and status; that the corpus delicti has been lawfully verified by other means, and that the confession concurs with the facts and circumstances thereof. In addition, article 484 stipulates that any confession that is not made before the judge hearing the case and in the presence of the court clerk shall not constitute conclusive evidence, but merely circumstantial evidence or presumption of a more or less serious nature depending on the circumstances in which it was made and the merit that may be attached to statements by persons who claim they were witness to the confession. Article 323 requires a judge to take all necessary measures to ascertain that the accused or defendant has not been tortured or threatened with torture before he made his confession, and in particular to make sure that he has been examined by a physician.

54. Non-governmental sources reported that despite these requirements, it is in practice difficult to bar the use as evidence of a judicial or extrajudicial confession that has not been made freely and consciously, because article 483 of the Code virtually requires the accused to demonstrate "unequivocally" that the statement was made by mistake, under pressure or because he was not allowed free use of his faculties at the time he made it. The burden of proof thus falls entirely on the alleged victim.

55. In the introduction to the above-mentioned bill before Parliament concerning arrest on suspicion, the Government proposes to add a new subparagraph to article 319 of the Code, relating to statements by detainees before a judge. Under this subparagraph, the judge is required to ask detainees whether the police have complied with the obligation to inform them of their rights, which implicitly include the right to proper treatment. If this formality has not been performed, the judge shall declare invalid any statement which the detainee may have made to those who arrested him.

56. A number of sources told the Special Rapporteur that the legislative restrictions already referred to are compounded by another factor which makes it difficult to guarantee the protection of detainees against torture or ill-treatment, and which is connected with the nature of the Chilean system of criminal justice. The system, which is of the inquisitorial type, was described by government officials with whom the Special Rapporteur spoke as antiquated and deficient in terms of the guarantees it provides both to

persons facing trial and to the victims of possible abuses. The system places in the hands of the judge hearing a case responsibility for both the examination proceedings and the judgement, as well as authority to indict, a feature which is generally considered to exclude any possibility of an adversarial process and which jeopardizes the principle of impartiality. The judge conducts the trial through pre-trial proceedings which are held in camera, during which all the items of evidence are incorporated into the case and during the examination stage of which the suspect is subject to a system of supervision which frequently entails deprivation of freedom. The gathering of evidence is almost exclusively performed by the police; this could hardly be otherwise in view of the concentration of responsibility. Although the police are under the authority of the judge while they perform this task (and also of the Government Procurator in the second instance), in practice the supervision exercised is merely formal, and the police operate with a large degree of autonomy. The absence of a prosecution service to direct the investigation and supervise the activities of the police is one reason why the latter enjoy excessive autonomy, which may be a contributing factor to the use of violence during the initial phase of criminal proceedings. 13/ On completion of pre-trial proceedings, the judge issues the committal order. The actual trial phase then begins, during which the defence has an opportunity to bring forward evidence and arguments in writing. On conclusion of this procedure the same judge hands down his sentence.

57. In view of the features described above, the absence of a defending counsel during the first phase of the pre-trial proceedings is particularly detrimental. As C. Riego notes, with regard to the statement to the police and the answer to the charges before the judge "which are the first contacts between the suspect and the criminal prosecution service, the lack of defence is aggravated by the possibility that the suspect's statements will be taken as substantive evidence in the trial. This is perfectly clear where the statement to the judge is concerned, and no restrictions apply. In the case of the statement to the police, there are tighter restrictions, although in the end article 484 of the Code of Penal Procedure authorizes the judge to use the statement as the basis for his judgement. The problem posed by the exclusion of professional counsel from these initial proceedings thus has far greater consequences than one might assume, because on account of the nature of our judicial system these steps might prove to have a decisive bearing on the final outcome of the trial; consequently the exclusion of counsel at this stage may actually prevent the possibility of effective defence during the rest of the trial". 14/

58. The shortcomings of the existing system have led the Government to undertake a set of reforms, as part of which, on 9 June 1995, it submitted to the National Congress a bill for a new Code of Penal Procedure introducing an accusatorial and oral system. A cornerstone of this system would be the establishment of a prosecution service, for which the relevant regulations are being drawn up. This prosecution service would conduct criminal proceedings under the authority of a supervisory magistrate, thereby preserving the impartiality of the trial judge. According to a study by the National Compensation and Reconciliation Agency, "the judge, who would be released from the burden of directing the investigation (a task to which, moreover, he frequently fails to devote sufficient time on account of his other duties) could thus devote greater attention to ensuring that the investigation takes

place within the bounds of the law. The problem of confessions is crucial in this respect. Under the current system, whereby the judge nominally directs the investigation, although the procedure normally follows its own course and is to a large extent conducted by the police without any further supervision, a suspect's confession becomes a key element in establishing his criminal responsibility. The confession is frequently "extracted" by the police, which has the effect of giving rise to a sense of police certainty regarding both the offence and the culprits. The judge generally accepts this police version without delving further, probably out of a belief that, in view of the precarious nature of the investigatory machinery, too suspicious an attitude towards the activities of the police would leave many cases unsolved. The institution of a prosecution service, endowed with greater resources, would thus enable us to break out of this vicious circle, and permit more diligent, systematic and complete investigations to be carried out, with clearer control over the activities of the police. Such investigations would make it possible to gather evidence to form a judicial opinion, going beyond a mere conviction on the part of the police. Moreover, releasing the judge from his investigatory tasks would enable him to make a greater effort to ensure that the rights of detainees are not violated". 15/

59. Non-governmental sources expressed their satisfaction to the Special Rapporteur at the submission of the bill, although they said that even if it were successfully adopted, it would take several years before it came fully into force. The President of the Supreme Court expressed his disagreement with certain features of the reform, and in particular with the fact that the judicial bodies would lose control over the investigatory phase of the proceedings, when these were transferred to the Prosecution Service, whose chief would be elected by the legislature on the basis of political criteria. He also said that although the current system had numerous defects, they were largely offset by the highly sophisticated organizational structure of the judiciary, where because of the fact that the Courts of Appeal exercised strict control over the judges, cases of corruption were rare.

60. Regarding the practice of the courts in respect of torture, the non-governmental sources with whom the Special Rapporteur conferred all agreed that as a rule the judiciary had failed to show sufficient determination when it came to punishing acts of torture. In many of the cases reported, the judge would fail to carry out an investigation or content himself with requesting a police report. This tendency in conjunction with the difficulties in providing evidence which the alleged victim frequently encounters, results, as the authorities confirmed, in only a small number of cases being brought against members of the police. The Special Rapporteur asked the authorities to provide statistics on cases in which members of the police had been tried and punished in criminal and disciplinary proceedings for acts of torture or ill-treatment. The authorities replied, however, that such statistics were not immediately available and that criminal statistics as a whole were very inadequate.

61. On the other hand, there seems to be a deep lack of interest in cases which have not led to a formal complaint. Despite this , judges are not unaware of police practices. The study referred to above, by Maria Angélica Jiménez, notes that in a survey carried out in 1993 among criminal judges of the Santiago court of appeal, 40 and 50 per cent recognized

that the Carabineros and the Police Department respectively do not always comply with the requirements of the law, while the use of ill-treatment against detainees was recognized by 85 and 95 per cent of those questioned respectively. In 77 and 68 per cent of cases the judges considered the ill-treatment to be light. 16/ The same survey sought to identify the importance attached by judges to extrajudicial confessions, and concluded that 40 per cent of such confessions were deemed reliable in the case of Carabineros and 35 per cent in that of the Police Department. In contrast, judges deemed that 25 per cent of confessions were unreliable in the case of Carabineros and 20 per cent in that of the Police Department. Consequently it may be concluded that there is no consensus among judges on this point.

62. According to non-governmental sources, when abuses are committed by Carabineros it is normally the military courts that assume jurisdiction, on account of the excessively broad interpretation of the concept of an "act committed in the course of duty" ("acto de servicio").

63. The President of the Military Appeal Court told the Special Rapporteur that he was not aware of cases in which the value of statements by the accused or witnesses had been impaired because they had been obtained under duress. In reply to a question from the Special Rapporteur as to whether he was aware of cases in which members of Carabineros had been punished for such acts, the President said that he had recently convicted two Carabineros for rape, and that no small number of penalties were handed down for "unnecessary violence".

64. Finally, in its second periodic report to the Committee against Torture, the Government reported that between March 1990 and October 1993 some 50 complaints were lodged with the country's civil and military courts for alleged ill-treatment of prisoners at the hands of the police, most of which were still pending. 17/

65. However, not all judges take the same approach. In a sentence handed down by the Santiago Court of Appeal on 4 October 1994, in which the case against all those convicted by the Court of First Instance was dismissed, the count found that in their statements to the examining magistrates, two of the accused, Patricio Fernando Ortiz Montenegro and Rodrigo Morales Salas, had denied they belonged to any militia or armed group, and had added that they had made their statement to the military prosecutor because they had been tortured. Their injuries, which gave rise to a complaint whose outcome was not recorded by the Court, are on record in the file. The Court thus rejected the statements obtained under torture, on the basis of the provisions of article 14.3 (g) of the International Covenant on Civil and Political Rights, 8.2 (g) of the Pact of San José, Costa Rica and article 15 of the Convention against Torture. Moreover, in the case of Ortiz Montenegro, the Court added that the detainee's statement failed to satisfy the first requirement laid down by article 481 of the Code of Penal Procedure regarding admissibility, "besides which the procedurally improper and inappropriate manner in which it was obtained prevent it from even being considered as an item of evidence or a presumption under article 484, paragraph 1". However, non-governmental sources said that such judgements were exceptional.

## B. Criminal legislation

66. The Constitution, in its article 19.1, prohibits the use of any unlawful coercion ("apremio ilegítimo"). Article 150 of the Penal Code provides that anyone who unduly orders or prolongs incommunicado detention of a detainee, who inflicts ill-treatment or uses undue severity shall be sentenced to one of the degrees of medium-term rigorous or ordinary imprisonment and to suspension from duty. 18/ If the use of ill-treatment or undue severity causes injury or death, the person responsible shall receive the maximum penalty for the offence.

67. Article 255 stipulates that any public employee who, in the performance of his duties, unfairly ill-treats a person or uses unlawful or unnecessary coercion to perform his duties, shall be sentenced to one of the various degrees of suspension from duty and to a fine of between 11 and 20 minimum wages.

68. The Code of Military Justice, which applies to Carabineros, also lays down a range of penalties, the severity of which depends on the injury caused, for "military personnel who in carrying out an order from a superior officer or in the exercise of their military duties, use or order the use of unnecessary violence, without reasonable grounds, to perform the acts required. ... If the violence is used against detainees or prisoners in order to obtain facts, information, documents or other evidence relating to an investigation into an offence, the penalties shall be increased by one step".

69. The Ministries of Justice and of the Interior informed the Special Rapporteur that the Government intends shortly to submit to Congress a reform bill for article 150 of the Penal Code. Under the bill, the penalties currently laid down shall apply to "anyone who tortures or has a person tortured". Simultaneously, the bill includes the definition of torture contained in article 1 of the Convention against Torture, 19/ in place of the excessively vague offences relating to the use of ill-treatment and coercion provided for by current legislation. A recommendation in this respect was made by the Committee against Torture when it considered Chile's periodic report in November 1994. 20/

# IV. CONCLUSIONS

70. The Special Rapporteur appreciated the rapid positive response of the Government of Chile to his request to visit the country. This was evidence, in his opinion, of the readiness of the Government to cooperate with the international community in human rights matters. That cooperation was, in turn, a reflection of the Government's acknowledgement of the role played by the international community in focusing on the grave and systematic human rights violations that had taken place during the period of the military dictatorship.

71. A profound difference from that period was the real commitment of the civilian Governments to human rights and, in particular, to the need to eliminate the perpetration of torture or cruel, inhuman or degrading treatment

or punishment by officials of the State. Most non-governmental organizations and individuals the Special Rapporteur met accepted that the official stance of the Government was genuine.

72. However, many of them expressed doubts as to the priority the Government attached to the matter. They pointed out the virtually total impunity enjoyed by the military, including the uniformed police (Carabineros), for human rights crimes committed during the period of the military dictatorship; the fact that torture as such had not even been the subject of inquiry by the National Commission of Truth and Reconciliation; popular concern about common crime and a corresponding demand for the restoration of law and public order; and the tendency of the political authorities routinely to come to the defence of the police when the latter were accused of abuses.

73. In the Special Rapporteur's view, many of the allegations of such abuse are credible. It does not appear that abuses are systematic or routine, but nor are they isolated aberrations. During the period of the military dictatorship, the harshest and most intense torture was applied to political opponents suspected of involvement in armed violence. That violence continued after the reinstatement of civilian government and, for some years, so did the torture of suspects. The violence has now significantly diminished and the most recent of the few arrests and detention of those suspected of involvement in violent acts have not been accompanied by protracted torture. Indeed, while some of the treatment meted out to these persons would, in the Special Rapporteur's view, amount to torture or cruel or inhuman treatment, those affected avoid the use of the word torture. This seems to be because they associate torture with the infliction of electric shocks and that has rarely happened in the past two years or so.

74. On the other hand, there seems to be an extensive problem of brutal treatment, sometimes amounting to torture, carried out on suspected common criminals or witnesses. While he was unable to gather sufficient information to make a firm attribution of responsibility, the Special Rapporteur found plausible the general view that the uniformed police were more apt to engage in such practices than the plain-clothes detective force (Investigaciones). This could be explained simply by the fact that the uniformed police are more numerous. On the other hand, more likely explanations are that the uniformed police are protected by their being usually subject to military jurisdiction rather than the jurisdiction of the ordinary courts and that the leadership of the Investigaciones has evidenced a serious commitment to inculcating a disciplined culture of respect for the law they are charged with enforcing.

75. In the Chilean system, in which one judge investigates, prosecutes and pronounces verdict and sentence, the judiciary could do much to alleviate the problem. In fact, too many judges seem willing to ignore complaints of torture or ill-treatment and, in some ways, to contribute directly to the problem by ordering long periods of incommunicado detention and solitary confinement that in themselves, in the Special Rapporteur's view, can constitute cruel, inhuman and degrading treatment.

## V. RECOMMENDATIONS

76. In light of the above considerations the Special Rapporteur wishes to make the following recommendations.

(a) The uniformed police (Carabineros) should be brought under the authority of the Minister of the Interior, rather than the Minister of Defence. They should be subject to ordinary criminal jurisdiction only, and not to military jurisdiction. As long as the military criminal code continues to apply to them, acts of criminal human rights violations, including torture of civilians, should never be considered as an "act committed in the course of duty" (acto de servicio) and should be dealt with exclusively by the ordinary courts.

(b) Detention involving denial of access to the outside world (lawyer, family, doctor), whether effected by the police or on the orders of a judge, should not exceed 24 hours and, even in serious cases where there is a well-established fear of collusion prejudicial to the investigation, the maximum period of such detention should not exceed 48 hours.

(c) Judges should not have the power to order solitary confinement, other than as a measure in cases of breach of institutional discipline, for more than two days. Pending a change in the law, judges should refrain from using a power that could amount to the ordering of cruel, inhuman or degrading treatment.

(d) All detainees should be provided, immediately after arrest, with information about their rights and how to avail themselves of such rights.

(e) All detainees should have their right to communicate without delay and in total confidentiality with their legal counsel fully guaranteed. The domestic law should take into consideration, in this regard, the provisions contained in Principle 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, as well as paragraph 8 of the Basic Principles on the Role of Lawyers.

(f) All detainees should have access to prompt medical examination by an independent physician. Current legislation should at least be adapted, in this regard, to Principles 24 to 26 of the above-mentioned Body of Principles.

(g) The identity of the officials carrying out the arrest and interrogations should be properly recorded. Detainees and their lawyers, as well as judges, should have access to this information.

(h) The practice of blindfolding detainees in police custody should be absolutely forbidden.

(i) Serious consideration should be given to the possibility of videotaping interrogations and the making of formal confessions or statements, both to protect detainees from abuse and to protect the police from unfounded allegations of improper behaviour.

(j) Persons alleged to have committed acts of torture should be suspended from official duties during the investigation.

(k) The burden of proving that a person was subjected to torture should not fall wholly on the alleged victim. The officials involved or their superiors should also be obliged to provide evidence to the contrary.

(l) Judges should make full use of the possibilities provided for in the law regarding the proceedings of habeas corpus (procedimiento de amparo). They should, in particular, seek access to the detainee and verify his/her physical condition. Negligence on their part on this issue should be the subject of disciplinary sanctions.

(m) The provisions regarding arrest on suspicion (detención por sospecha) should be amended in order to ensure that such arrest only takes place in strictly controlled circumstances and in accordance with national and international standards guaranteeing the right to personal freedom. Those arrested on suspicion should be segregated from other detainees and given the possibility of communicating immediately with relatives and lawyer.

(n) Close attention should be given to the recommendation of the Committee against Torture on the advisability of making special provision for the offence of torture, as described in article 1 of the Convention, and making it punishable by a penalty appropriate to its seriousness. Periods of prescription should also reflect the gravity of the crime.

(o) Measures should be taken in order to recognize the competence of the Committee in the circumstances described in articles 21 and 22 of the Convention.

(p) Measures should be taken in order to ensure that victims of torture obtain adequate compensation.

(q) The Programme of Compensation and Full Health Care for Victims of Human Rights Violations (PRAIS) should be reinforced so that it can assist victims of torture that occurred under either the military or the civilian Governments in all aspects of their rehabilitation, including their professional rehabilitation.

(r) National non-governmental organizations also play, and have played in the past, an important role in the rehabilitation of torture victims. Whenever they require it, they should receive official support to carry out their activities in this respect. At the same time, the Government is urged to consider increasing its contribution to the United Nations Voluntary Fund for Victims of Torture which, over the years, has financed the programmes of several NGOs in Chile.

(s) Serious consideration should be given, as a matter of priority, by the Government and Congress to proposals, some of them at present before the Congress, aimed at reforming the Code of Penal Procedure. In particular, a prosecution service (Ministerio Público) independent of the Government should be responsible for preparing cases for eventual adjudication. There should be equality of arms between the Ministerio Público and the defence.

(t) The Government should consider sending to the Congress proposals for the establishment of a national institution for the promotion and protection of human rights. When a bill in this regard is being drafted, consideration should be given to the principles relating to the status of national

institutions, established by the Commission on Human Rights in its resolution 1992/54 of 3 March 1992 and approved by the General Assembly. 21/

(u) All allegations of torture committed since September 1973 should be the subject of a thoroughgoing public inquiry, similar to that carried out by the National Commission for Truth and Reconciliation in respect of forced disappearances and extra-legal executions. In cases where the evidence justifies it - and, given the period of time that has elapsed since the worst practices of the military government took place, this would admittedly be rare - those responsible should be brought to justice, except where proceedings are barred by the statute of limitations (prescripción).

77. Chile possesses excellent specialists in international human rights law. The Government should identify suitable channels to enable them to contribute in the best possible way to constantly adapting Chile's domestic law and its administrative and judicial practice to the requirements of the international human rights norms by which Chile is bound. To this end, the Government should more decisively sponsor institutional campaigns to disseminate and promote human rights throughout Chile. Where the prevention of torture is concerned, efforts to retrain the officials concerned (judges, lawyers, doctors, police) should be intensified. The advisory services of the Centre for Human Rights could contribute to this effort.

## Notes

1/ Report of the Committee against Torture, A/50/44, paras. 52-61.

2/ María Angelica Jimenez, El Proceso Penal Chileno y los Derechos Humanos, Vol. II, Estudios Empíricos. Cuaderno de análisis jurídico, 1994, Law Faculty, Diego Portales University, pp. 193-206.

3/ The Forensic Medicine Department acts only in cases where the judge so requests. See below, para. 45.

4/ CODEPU, "Los derechos humanos y la administración Frei", March 1994-August 1995, p. 14.

5/ Adopted by the General Assembly in resolution 43/173 of 9 December 1988.

6/ As a result of the internal investigation conducted by the Police Department, several of the latter's officials were dismissed from the force. Criminal proceedings are still in progress, and the Supreme Court appointed an inspecting magistrate in August 1993. In March 1994 Tania María Cordeiro was unconditionally released by a Supreme Court decision.

7/ "Las garantías de la detención en Chile", in Proceso Penal y Derechos Fundamentales, Colección Estudios, No. 1, p. 205.

8/ This may comprise deprivation of contacts both outside and within the institution (solitary confinement).

9/ Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

10/ In accordance with this paragraph "In the determination of any criminal charges against him, everyone shall be entitled ... in full equality: to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing".

11/ HRI/GEN/1/Rev.1, p. 16.

12/ According to a study carried out by the Andean Commission of Jurists, "court practice has developed a set of formalities in connection with amparo proceedings which run counter to internationally established standards regarding effective remedy. As under the military regime, in general once he has received an application, the judge sends a written request to the authority responsible for the detention to explain the grounds for the arrest or, if appropriate, to bring the detainee before him. This attitude on the part of the courts is particularly serious if we bear in mind that even since 1990 there have been reports of cases of torture and ill-treatment occurring on police premises, which were not in fact properly looked into by the judicial authorities" (Chile: Sistema Judicial y Derechos Humanos, 1995, p. 50).

13/ In the view of Cristián Riego, "it may be plausibly argued that the scant judicial control over the gathering of evidence by the police is largely attributable to the judges' appreciation of the problems our inquisitorial system poses for the proper investigation of offences; these difficulties would make it virtually impossible to obtain evidence if tighter control were exercised over the police, who, it has to be admitted, are virtually the sole source of evidence during the investigation phase" (El proceso penal chileno y los derechos humanos. Aspectos jurídicos, Cuaderno de análisis jurídico, Escuela de Derecho de la Universidad Diego Portales, p. 68. See, also, Maria Angélica Jimenez, op. cit. p. 29).

14/ Ibid, p., 81.

15/ "Las garantías de la detención en Chile", loc. cit., pp. 228-229.

16/ Ibid. pp. 216-221.

17/ CAT/C/20/Add.3, para. 37.

18/ The length of the periods of medium-term rigorous or ordinary imprisonment ranges from a minimum of 61 days to a maximum of five years. Suspension from duty and public office may range from 61 days to three years.

19/ In accordance with this definition "the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on

discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".

20/ A/50/44, para. 60. A proposed reform of the Penal Code, prepared under the aegis of the National Compensation and Reconciliation Agency, amends the wording of article 150, and breaks down the conduct constitutive of an offence on the basis of the degree of injury inflicted and its purpose, which is equivalent to drawing a distinction between torture and cruel, inhuman or degrading treatment, the terms employed in the international instruments which are, however, alien to Chilean legal terminology. Article 152 of the proposed reform provides as follows:

"Any public official who unduly orders, makes use of or prolongs incommunicado detention of a person deprived of his liberty, who makes use of unlawful coercion or unnecessary severity against him shall be sentenced to suspension from duty, in any of its degrees.

The penalty shall be any of the degrees of specific or absolute disqualification for a limited time if incommunicado detention is ordered, practised or prolonged, or if coercion or severity is employed for the following purposes:

1. To compel the victim or a third party to make a confession or to make any other form of statement;

2. To intimidate or harass the victim or to intimidate a person close to him;

3. To impose an unlawful punishment on the victim.

If the coercion or severity causes death or [injury], the official shall be sentenced to general disqualification for life, provided that the result is attributable at least to negligence on his part."

Art. 153. "In addition to the penalties laid down in the previous article, the court shall sentence the official to the penalties provided for by the common provisions applicable to such acts, according to the circumstances of the case.

The severest degree of the penalties referred to in the aforegoing paragraph shall be handed down by the court, which may moreover apply the next most severe penalty."

Antonio Bascuñan Rodriguez, "Proyecto de reforma del Código Penal para una mejor protección de los derechos de las personas" in Corporacíon Nacional de Reparación y Reconciliatión , Protección Penal de los Derechos Constitucionales, Colección Estudios No. 3.

21/ General Assembly resolution 48/134 of 20 December 1993, annex.

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